

**EXHIBIT A
PART 12 OF 12**

CAUSE NO. D-1-GN-12-003588

**VERSATA SOFTWARE, INC., F/K/A
TRILOGY SOFTWARE, INC., AND
VERSATA DEVELOPMENT GROUP,
INC., F/K/A TRILOGY
DEVELOPMENT GROUP, INC.,**

IN THE DISTRICT COURT

PLAINTIFFS

V.

**AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL
SERVICES, INC., AMERICAN
ENTERPRISE INVESTMENT
SERVICES, INC.,**

OF TRAVIS COUNTY, TEXAS

DEFENDANTS

53RD JUDICIAL DISTRICT

**NOTICE OF HEARING ON PLAINTIFFS' MOTION TO COMPEL COMPLIANCE
WITH SUBPOENA TO TATA CONSULTANCY SERVICES LTD.**

Please take notice that a hearing will be held on November 15, 2013, at 9:00 a.m. on Plaintiffs' Motion to Compel Compliance With Subpoena to Tata Consultancy Services Ltd.

Respectfully submitted,

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING,
P.C.

/s/ Benjamin F. Foster

Demetrios Anaipakos
State Bar No. 00793258
Amir Alavi
State Bar No. 00793239
Steven J. Mitby
State Bar No. 27037123
Benjamin F. Foster
State Bar No. 24080898
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MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.
 Travis Barton
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 600 Congress Avenue, Suite 2100
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 Telephone: (512) 495-6000
 Facsimile: (512) 495-6093
 ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon the following counsel of record via facsimile and/or certified mail, postage prepaid, return receipt requested and/or email on November 8, 2013:

Robert I. Steiner
 Kelley, Drye & Warren LLP
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 New York, New York 10178
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rsteiner@kellydrye.com

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 tcbarton@mcginnislaw.com

/s/ Benjamin F. Foster
 Benjamin F. Foster

No. D-1-GN-12-003588

**VERSATA SOFTWARE, INC., F/K/A
TRILOGY SOFTWARE, INC.; and
VERSATA DEVELOPMENT GROUP,
INC., F/K/A TRILOGY DEVELOPMENT
GROUP, INC.,**

Plaintiffs,

v.

**AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL SERVICES,
INC., AMERICAN ENTERPRISE
INVESTMENT SERVICES, INC.,**

Defendants.

**IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS**

53rd JUDICIAL DISTRICT

NOTICE OF APPEARANCE

1. Comes now, Timothy J. Herman, and makes an appearance in the above numbered and entitled cause on behalf of Tata Consultancy Services, Ltd. ("TCS"), a non-party to this action.

2. TCS is interested in this matter as the result of having been subpoenaed by the Plaintiff in an effort to conduct third party discovery and has having been made a subject of Plaintiff's Motion to Compel.

Respectfully submitted,

HOWRY BREEN & HERMAN, L.L.P.

/s/ Tim Herman

Timothy J. Herman
State Bar No. 09513700
Sean E. Breen
State Bar No. 00783715
1900 Pearl Street
Austin, Texas 78705-5408
(512) 474-7300
(512) 474-8557 Fax
ATTORNEY FOR TATA CONSULTANCY
SERVICES, LTD., Non-Party

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon the following counsel of record via facsimile and/or e-service November 14, 2013.

Robert I. Steiner
Kelley Drye & Warren LLP
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Demetrios Anaipakos
Amir Alavi
Steven J. Mitby
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Houston, Texas 77010
Fax: (713) 655-1101

/s/ Tim Herman

No. D-1-GN-12-003588

**VERSATA SOFTWARE, INC., F/K/A
TRILOGY SOFTWARE, INC.; and
VERSATA DEVELOPMENT GROUP,
INC., F/K/A TRILOGY DEVELOPMENT
GROUP, INC.,**

Plaintiffs,

v.

**AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL SERVICES,
INC., AMERICAN ENTERPRISE
INVESTMENT SERVICES, INC.,**

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53rd JUDICIAL DISTRICT

MOTION FOR CONTINUANCE

1. Comes now, Tata Consultancy Services, Ltd. ("TCS"), a non-party to this action.
2. TCS is interested in this matter as the result of having been subpoenaed by the Plaintiff in an effort to conduct third party discovery and has having been made a subject of Plaintiff's Motion to Compel.
3. Without consultation or conference, Plaintiff set its Motion to Compel on Friday, November 15, 2013 at 9:00 a.m. Lead counsel for TCS, Mr. Robert Steiner was notified of the setting at his New York office by fax received at 5:49 p.m. on Friday, November 8, 2013.
4. The issues involved in this hearing concern extremely complicated matters such as the confidentiality and proprietary nature of complex software systems and source code. The hearing on this matter will consume far in excess of the fifteen minutes allowable for matters set

on Friday morning in Travis County. In fact, a hearing on the discoverability of much of the information sought from TCS, a third party, could consume an entire day and potentially *in camera* inspections of source code and other proprietary matters.

5. Despite the complex nature of this motion, Plaintiff set it for Friday morning and announced for fifteen minutes. TCS attempted to announce “not ready” and inform the coordinator of the erroneous nature of Plaintiff’s announcement. However, because Plaintiff had announced for fifteen minutes, TCS has been forced to appear to let the Court know that this hearing is not suitable for the setting.

6. TCS has attempted to resolve this matter in a variety of ways in numerous conferences with Plaintiff’s counsel but has been unable to do so.

7. This continuance is sought, not for delay, but so that justice may be done.

Respectfully submitted,

HOWRY BREEN & HERMAN, L.L.P.

/s/ Tim Herman
Timothy J. Herman
State Bar No. 09513700
Sean E. Breen
State Bar No. 00783715
1900 Pearl Street
Austin, Texas 78705-5408
(512) 474-7300
(512) 474-8557 Fax
ATTORNEY FOR TATA CONSULTANCY
SERVICES, LTD., Non-Party

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon the following counsel of record via facsimile and/or e-service on November 14, 2013.

Robert I. Steiner
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178
Fax: (212) 808-7897

Peter M. Lancaster
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Demetrios Anaipakos
Amir Alavi
Steven J. Mitby
Benjamin F. Foster
1221 McKinney Street, Suite 3460
Houston, Texas 77010
Fax: (713) 655-1101

/s/ Tim Herman

SAMUEL D. THOMAS

D.I.GN.12003588

Page 127

1 DEPOSITION OF SAMUEL D. THOMAS/LG

2 Page No. Line No. should read:
3 96 5 E 6 Leads Management4 Page No. Line No. should read:
5 97 18 BoardingFiled in The District Court
of Travis County, Texas6 Page No. Line No. should read:
7 116 23 E 24 Remote AccessNOV 12 2013 JA
AMALIA RODRIGUEZ-MENDOZA, CLERK

8 Page No. Line No. should read:

10 Page No. Line No. should read:

12 Page No. Line No. should read:

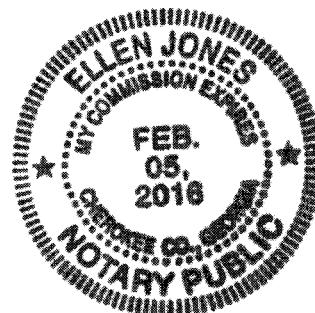
14 If supplemental or additional pages are necessary,
please furnish same in typewriting annexed to this
15 deposition.

17 SAMUEL D. THOMAS

18 Sworn to and subscribed before me,
this the 7 day of October , 2013 .

20 Notary Public

My commission expires:

Ellen Jones
Feb. 5, 2016



Deposition and Litigation Services

www.hglitigation.com

1-888-656-DEPO (3376)

November 5, 2013

Via CMRRR

Amalia Rodriguez-Mendoza
Travis County District Clerk
PO Box 679003
Austin, TX 78767

Re: Deposition of McCamish Systems, LLC
Deposition Date: 09/18/2013
Versata Software, Inc., et al v Ameriprise Financial, Inc. et al
Cause No.: D-1-GN-003588

Dear Ms. Rodriguez-Mendoza:

Enclosed for filing, please find the Court Reporter Certificate Page:

As of today's date our office has not received the witness errata & signature page.

Errata with changes (Copy/Original)
FedEx/UPS/CMRRR/USPS>Email *For office use only*

Errata without changes
FedEx/UPS/CMRRR/USPS>Email *For office use only*

Signature page with signature (Copy/Original)
FedEx/UPS/CMRRR/USPS>Email *For office use only*

Signature page without signature
FedEx/UPS/CMRRR/USPS>Email *For office use only*

Please do not hesitate to contact our office should you need further assistance.

Respectfully yours,

Amanda Reyes
HG Litigation Services

DH/ar

Enclosure

cc: All Counsel in Appearance (Via Electronic Mail)

888.656.DEPo

www.hglitigation.com

2501 Oak Lawn Avenue, Suite 600 • Dallas, Texas 75219

SAMUEL D. THOMAS D-1 GN-12-003588

Page 125

1 C E R T I F I C A T E

2 STATE OF GEORGIA:

Filed in The District Court
of Travis County, Texas

3 COUNTY OF FULTON:

NOV 12 2013 JA

AL 1:20 p.
Amelia Rodriguez-Mendoza, Clerk

5 I hereby certify that the foregoing
6 transcript was taken down, as stated in the
7 caption, and the questions and answers
8 thereto were reduced to typewriting under
9 my direction; that the foregoing pages 1
10 through 124 represent a true, complete, and
11 correct transcript of the evidence given
12 upon said hearing, and I further certify
13 that I am not of kin or counsel to the
14 parties in the case; am not in the regular
15 employ of counsel for any of said parties;
16 nor am I in any way interested in the
17 result of said case.

18 This, the 20th day of September,
19 2013.

21
22 *Lamarra George*
Lamarra George, CCR-2582
23 My commission expires on
the 31st of March 2014.
24

25

SAMUEL D. THOMAS

Page 124

1 DISCLOSURE

2 STATE OF GEORGIA DEPONENT: SAMUEL D. THOMAS
3 COUNTY OF FULTON

4 Pursuant to Article 10.B of the Rules and
5 Regulations of the Board of Court Reporting of the
6 Judicial Council of Georgia, I make the following
disclosure:

7 I am a Georgia Certified Court Reporter. I
8 am here as an independent contractor for HG
Litigation, Incorporated.

9 HG Litigation, Incorporated was contacted by
10 the offices of Ahmad Zavistsanos & Anaipakos, Alavi,
Mensing, P.C., to provide court reporting services
for this deposition.

11 HG Litigation, Incorporated will not be
12 taking this deposition under any contract that is
prohibited by O.C.G.A. 9-11-28(c).

13 HG Litigation, Incorporated has no
14 contract/agreement to provide reporting services
15 with any party to the case, any counsel in the case,
or any reporter or reporting agency from whom a
16 referral might have been made to cover this
deposition. HG Litigation, Incorporated will charge
17 its usual and customary rates to all parties
in the case, and a financial discount will not be
given to any party to this litigation.

18
19 

20 Lamarra George, CCR-2582
Certified Court Reporter
21 September 18, 2012

22 Firm No. Dallas: 69 Houston: 373
23
24
25



Deposition and Litigation Services

www.hglitigation.com

1-888-656-DEPO (3376)

September 24, 2013

Roger Borovoy
Fish & Richardson - Silicon Valley
500 Arguello Street, Suite 500
Redwood City, CA 94063

Re: Deposition of McCamish Systems, LLC
Deposition Date: 09/18/2013
Versata Software, Inc., et al v Ameriprise Financial, Inc. et al
Cause No.: D-1-GN-003588

Dear Roger Borovoy:

Please have your client read and sign the attached Oral Deposition, making any necessary changes on the errata sheet that is provided.

Please return the original errata and witness signature page to the office listed below within thirty (30) days or before October 24, 2013 for filing, as agreed by the parties.

If we can be further assistance to you, please do not hesitate to contact our office.

Respectfully yours,

Amanda Reyes
HG Litigation Services
1-888-656-DEPO

DH/ar
Enclosure

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www.hglitigation.com

2501 Oak Lawn Avenue, Suite 600 • Dallas, Texas 75219

19113

No. D-1-GN-12-003588

VERSATA SOFTWARE, INC., F/K/A TRILOGY SOFTWARE, INC.; and VERSATA DEVELOPMENT GROUP, INC., F/K/A TRILOGY DEVELOPMENT GROUP, INC.,	§	IN THE DISTRICT COURT OF
	§	TRAVIS COUNTRY, TEXAS
	§	
V.	§	53 rd JUDICIAL DISTRICT
	§	
AMERIPRISE FINANCIAL, INC., AMERIPRISE FINANCIAL SERVICES, INC., AMERICAN ENTERPRISE INVESTMENT SERVICES, INC.	§	
	§	
	§	

**NON-PARTY TATA CONSULTANCY SERVICES, LTD.'S OBJECTIONS AND
MOTION FOR PROTECTION REGARDING THE SUBPOENA DEPOSITION TO
TESTIFY AND/OR PRODUCE DOCUMENTS OR THINGS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Non-Party Tata Consultancy Services, Ltd. ("TCS") in the above-styled and numbered cause, and files this Objection and Motion for Protection regarding the subpoena, dated September 11, 2013, seeking a deposition and production of documents from TCS and will show as follows:

I.

On September 11, 2013, TCS was served with a Subpoena Deposition to Testify and/or Product Documents or Things. TCS objects on all the grounds set out herein, including under Texas Rules of Civil Procedure.

II.

TCS objects to the subpoena seeking a deposition of a corporate representative of TCS and the request for production of documents on all the grounds set out herein and requests that the Court enter a protective order in favor of TCS, if necessary.

The requested deposition of a corporate representative of TCS will, for the reasons set out herein, cause TCS undue burden and expense and result in the disclosure of privileged trade

secret information and information irrelevant to this lawsuit and not likely to lead to the discovery of admissible evidence. The deposition topics propounded are over broad, vague, and harassing.

III.

TCS objects to the requests for production of documents because the requests seek information that is protected by the attorney-client, work product, and trade secret privileges, seek information that is irrelevant and not likely to lead to the discovery of admissible evidence, and seek information that is private and confidential. TCS also objects because the requests are harassing, over broad, unduly burdensome, vague, not reasonably limited in scope or time, and duplicative and cumulative of previously produced and publicly available documents. TCS also objects because the requests are an improper fishing expedition into TCS's files. If necessary, a protective order should be entered. More specifically, TCS objects to each request as follows:

REQUEST FOR PRODUCTION NO. 1: Documents sufficient to identify the types of enterprise configuration and/or compensation software or any software that assists a corporation in structuring and classifying its different contractors, employees, or agents that TCS develops and markets.

RESPONSE: TCS objects to this Request for Production because it is over broad, unduly burdensome, harassing, and not limited in time or scope – it seeks information about a wide range of TCS products, both those in development and on the market. It is also vague in its description of the documents being sought, in that the phrase “enterprise configuration and/or compensation software” is undefined preventing TCS from ascertaining exactly what documents are requested. It also seeks documents that are irrelevant to the lawsuit and not likely to lead to the discovery of admissible evidence. It is also duplicative and cumulative of information already in Plaintiffs’ possession or which can be more conveniently obtained from public sources, such as the TCS website. It is also improper because it requests production of privileged TCS trade secret information and information subject to attorney-client and work product privilege. Subject to the foregoing and without waiving the same, TCS directs Plaintiff to its website www.tcs.com for information responsive to this Request.

REQUEST FOR PRODUCTION NO. 2: Document sufficient to identify whether the following software programs that assist a corporation in structuring and classifying its different contractors, employees or agents and whether any of the following software programs perform any enterprise configuration and/or compensation functions:

- a. TCS Human Capital Management Platform
- b. TCS HRO Platform
- c. TCS BPO Solutions
- d. TCS Analytics Platform
- e. TCS Automotive Retail Accelerator Solution
- f. TCS Hosted OSS/BSS
- g. TCS BaNCS and the Insurance, Property & Casualty, and Life & Pension Solutions from TCS BaNCS.

RESPONSE: TCS objects to this Request for Production because it is vague in its description of the documents being sought, in that the phrase “enterprise configuration and/or compensation functions” is undefined preventing TCS from ascertaining exactly what documents are requested. It also seeks documents that are irrelevant to the lawsuit and not likely to lead to the discovery of admissible evidence. It is also duplicative and cumulative of information already in Plaintiffs’ possession or which can be more conveniently obtained from public sources, such as the TCS website. It is also improper because it requests production of privileged TCS trade secret information and information subject to attorney-client and work product privilege. Subject to the foregoing and without waiving the same, TCS directs Plaintiff to its website www.tcs.com for information responsive to this request.

REQUEST FOR PRODUCTION NO. 3: Documents sufficient to identify the features and functionality of any software programs that assist a corporation in structuring and classifying its different contractors, employees or agents.

RESPONSE: TCS objects to this Request for Production because it is over broad, unduly burdensome, harassing, and not limited in time or scope – it seeks information about “any software programs” whether or not they are developed or sold by TCS or relate in any way to this litigation and seeks information about all of the “features and functionality” of all of those programs. It is also vague in its description of the documents being sought, in that the phrase “features and functionality” is undefined preventing TCS from ascertaining exactly what documents are requested. It also seeks documents that are irrelevant to the lawsuit and not likely to lead to the discovery of admissible evidence – indeed, the Request is not even limited to TCS programs. It is also improper because it requests production of privileged TCS trade secret information – the details of TCS’s software programs are highly confidential, not available to the public, and are the proprietary information of TCS. To the extent the Request does not seek trade secret information, it is duplicative and cumulative of information already in Plaintiffs’ possession or which can be more conveniently obtained from public sources, such as the TCS website. Subject to the foregoing and without waiving the same, TCS directs Plaintiff to its website www.tcs.com for information responsive to this Request.

REQUEST FOR PRODUCTION NO. 4: Documents sufficient to identify the features and functionality of any enterprise configuration and/or compensation software programs that TCS develops and markets, including but not limited to the software programs listed above.

RESPONSE: TCS objects to this Request for Production because it is over broad, unduly burdensome, harassing, and not limited in time or scope – it seeks information about “any enterprise configuration and/or compensation software programs that TCS develops and markets” and seeks information about all of the “features and functionality” of all of those software programs. It is also vague in its description of the documents being sought, in that the phrases “enterprise configuration and/or compensation software programs” and “features and functionality” are undefined, preventing TCS from ascertaining exactly what documents are requested. It also seeks documents that are irrelevant to the lawsuit and not likely to lead to the discovery of admissible evidence. It is also improper because it requests production of privileged TCS trade secret information – the details of TCS’s software programs are highly confidential, not available to the public, and are the proprietary information of TCS. To the extent the Request does not seek trade secret information, it is duplicative and cumulative of information already in Plaintiffs’ possession or which can be more conveniently obtained from public sources, such as the TCS website. Subject to the foregoing and without waiving the same, TCS directs Plaintiff to its website www.tcs.com for information responsive to this request.

WHEREFORE, for the reasons stated above and at any hearing on this matter, TCS respectfully request that this Court grant the objections, quash the notices of requests for documents if needed and enter a protective order if necessary and requests all further relief to which TCS may be entitled.

Respectfully submitted,

HOWRY BREEN & HERMAN, L.L.P.

/s/ Tim Herman

Timothy J. Herman
State Bar No. 09513700
Sean E. Breen
State Bar No. 00783715
1900 Pearl Street
Austin, Texas 78705-5408
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(512) 474-8557 Fax

Of Counsel:

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Damon W. Suden
101 Park Avenue
New York, New York 10178
(212) 808-7800
(212) 808-7897

**Attorneys for Tata Consultancy
Services, Ltd., Non-Party**

CERTIFICATE OF SERVICE

I certify that on the 22nd day of November, 2013, I sent a true and complete copy of this pleading via electronic filing and/or facsimile to the following persons in accordance with the Texas Rules of Civil Procedure.

Peter M. Lancaster
Heather D. Redmond
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50 South Sixth Street, Suite 1500
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Demetrios Anaipakos
Amir Alavi
Steven J. Mitby
Benjamin F. Foster
1221 McKinney Street, Suite 3460
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Fax: (713) 655-0062

/s/ Tim Herman

Tim Herman



Deposition and Litigation Services

www.hglitigation.com

1-888-656-DEPO (3376)

November 8, 2013

Filed in The District Court
of Travis County, Texas

Via CMRRR

Amalia Rodriguez-Mendoza
Travis County District Clerk
PO Box 679003
Austin, TX 78767

NOV 15 2013 MR
At 100 p.m.
Amalia Rodriguez-Mendoza, Clerk

Re: Deposition of Praveen Ramachandra
Deposition Date: 10/07/2013
Versata Software, Inc., et al v Ameriprise Financial, Inc. et al
Cause No.: D-1-GN-003588

Dear Ms. Rodriguez-Mendoza:

Enclosed for filing, please find the Court Reporter Certificate Page:

As of today's date our office has not received the witness errata & signature page.

Errata with changes (Copy/Original)
FedEx/UPS/CMRRR/USPS>Email *For office use only*

Errata without changes
FedEx/UPS/CMRRR/USPS>Email *For office use only*

Signature page with signature (Copy/Original)
FedEx/UPS/CMRRR/USPS>Email *For office use only*

Signature page without signature
FedEx/UPS/CMRRR/USPS>Email *For office use only*

Please do not hesitate to contact our office should you need further assistance.

Respectfully yours,

Amanda Reyes
HG Litigation Services

DH/ar
Enclosure
cc: All Counsel in Appearance (Via Electronic Mail)

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www.hglitigation.com

2501 Oak Lawn Avenue, Suite 600 • Dallas, Texas 75219

1 SIGNATURE PAGE

2 I, PRAVEEN RANGANATHAN, the deponent, do hereby
3 certify that I have read the foregoing transcript of my
4 testimony and believe the same to be true and correct,
except as follows, noting the page and line number of
the change or addition desired and the reason why:

5 PAGE LINE CORRECTION AND REASON FOR CHANGE

6 Page - 34 - Management advised not to
7 Line 10 also rule

8 Page - 58 - cse Building
9 Line 1

10 Page 60 - 'CCD' and not 'CVS'
11 P - 139
12 Line 19

13 Deponent's Signature

14 Date

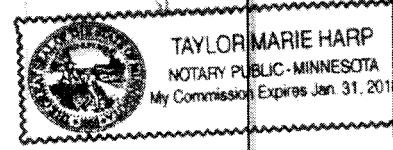
15
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20 Nov - 2013

Witness my hand and seal this day of 2013.



Notary Public
My Commission Expires:





Deposition and Litigation Services

www.hglitigation.com

1-888-656-DEPO (3376)

October 17, 2013

Roger Borovoy
Fish & Richardson - Silicon Valley
500 Arguello Street, Suite 500
Redwood City, CA 94063

Re: Deposition of Praveen Ramachandra
Deposition Date: 10/07/2013
Versata Software, Inc., et al v Ameriprise Financial, Inc. et al
Cause No.: D-1-GN-003588

Dear Roger Borovoy:

Please have your client read and sign the attached Oral Deposition, making any necessary changes on the errata sheet that is provided.

Please return the original errata and witness signature page to the office listed below within twenty (20) days or before November 6, 2013 for filing, as agreed by the parties.

If we can be further assistance to you, please do not hesitate to contact our office.

Respectfully yours,

Amanda Reyes
HG Litigation Services
1-888-656-DEPO

DH/ar
Enclosure

888.656.DEPO
www.hglitigation.com

2501 Oak Lawn Avenue, Suite 600 • Dallas, Texas 75219

193420

PRAVEEN RANGANATHAN - CONFIDENTIAL - AEO

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1 REPORTER'S CERTIFICATE

2 Be it known that I, Hartman L. Erickson, took
3 the foregoing videotaped deposition of PRAVEEN
4 RANGANATHAN;

5 That the witness, before testifying, was first
6 duly sworn as to the whole truth and nothing but the
7 truth relative to said cause;

8 That the testimony of said witness was recorded
9 in shorthand by me and transcribed by me and that the
10 foregoing deposition is a true record of the
11 testimony given by said witness, and that the reading
12 and signing of the foregoing deposition by said
13 witness was not waived by the witness and respective
14 counsel;

15 That I am not related to any of the parties
16 hereto, nor an employee of them, nor interested in
17 the outcome of the action, and that the cost of the
18 original has been charged to the party who noticed
19 the deposition, and all parties who ordered copies
20 have been charged at the same rate for such copies.

21 WITNESS MY HAND AND SEAL this 13th day of
22 October 2013.

23 
24 Hartman L. Erickson, Notary Public
25 Dakota County, Minnesota
My Commission Expires January 31, 2015
Firm No. Dallas: 69 Houston: 373

No. D-1-GN-003588

**VERSATA SOFTWARE, INC., F/K/A
TRILOGY SOFTWARE, INC.; and
VERSATA DEVELOPMENT GROUP,
INC., F/K/A TRILOGY DEVELOPMENT
GROUP, INC.,**

Plaintiffs,

-against-

**AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL SERVICES,
INC., AMERICAN ENTERPRISE
INVESTMENT SERVICES, INC.,**

Defendants.

**IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
53rd JUDICIAL DISTRICT**

**NON-PARTY TATA CONSULTANCY SERVICES, LTD.'S OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA**

Non-party Tata Consultancy Services, Ltd. ("TCS") submits this Memorandum of Law in opposition to Plaintiff Versata Software, Inc. and Versata Development Group, Inc.'s ("Versata") Motion to Compel compliance with its September 11, 2013 Subpoena.

Versata's motion to compel TCS – a non-party to this action – to produce a wide array of highly confidential and proprietary information and to provide a witness to testify on a broad range of topics should be denied. Versata ignores and does not disclose to the Court that TCS has already produced documents in this action in response to Versata's prior subpoena which sought information related to TCS's relationship with Defendants. Those documents provided Versata with all of the information it claims to need to prosecute its case. Thus, Versata's claim that TCS "has been unwilling to produce any documents" and that TCS "is stonewalling" is wrong.

Other than its boilerplate pronouncements that the information sought is "highly relevant" and discoverable under the Texas Rules of Civil Procedure, Versata provides no substantive reason why TCS should be compelled to produce its highly confidential trade secrets. Versata's argument that the "subpoenas are designed to verify whether TCS develops enterprise software code that competes with Versta" actually counsels in favor of quashing the subpoena. Versata claims to already know that TCS is a competitor of Versata. Moreover, the TCS website contains sufficient publicly available information for Versata to use to attempt to establish a competitor relationship, if indeed there is one. And, in connection with this opposition, TCS has submitted an affidavit attesting to its business and product offerings. Thus, based on Versata's stated purpose for seeking additional discovery from TCS, the subpoena is cumulative, duplicative, overly broad, unduly burdensome, and amounts to nothing more than a fishing expedition.

The subpoena is also improper because it seeks to fish through TCS's proprietary technical and trade secret information of the same type that Versata itself complains was compromised by Ameriprise. Under the circumstances of this case, there is no necessity for TCS to produce its trade secret information – even subject to a protective order. Accordingly, Versata's Motion to Compel should be denied.

STATEMENT OF FACTS

Background

Versata alleges that Ameriprise breached the parties' Master License Agreement ("MLA") and committed various business torts by, *inter alia*, hiring TCS to "perform maintenance and customization work on Versata's software" (Complaint ¶ 40)¹ and allowing

¹ The Complaint is attached as part of Exhibit C to Versata's Motion.

TCS to have access to Versata's "software, product documentation, and related materials" (Complaint ¶ 23). Versata alleges that the MIA prohibits TCS from having such access because TCS is not a "Permitted Contractor" by virtue of being a competitor with Versata "in the development of enterprise compensation or configuration software." (Complaint ¶ 23, 41.)

On or about February 1, 2013, Versata served TCS with a subpoena duces tecum in this action which contained eleven requests for documents ("the February Subpoena"). TCS responded to that request for documents by producing various Statements of Work which described, in detail, the services that TCS was contracted to provide to Ameriprise, including the major and minor enhancements that it made to Ameriprise's distribution channel management platform. In total, TCS produced approximately 120 pages of documents. Other than request No. 9 of the February Subpoena which sought, among other things, invoices unrelated to TCS's services, TCS did not object to any other request for documents. Versata made no complaint about TCS's production in response to the February Subpoena.

The September Subpoena Seeking Irrelevant, Cumulative, And Trade Secret Information

On or about September 11, 2013, TCS received another subpoena for the production of documents and, this time, of a witness to be deposed on September 30 (with subsequent revisions, the "September Subpoena"). This subpoena went far beyond the scope of the February Subpoena and sought documents and testimony concerning TCS's trade secret information. For example, the September Subpoena (attached as Exhibit J to Versata's Motion) sought production of documents related to seven software programs developed and owned by TCS as well as documents which showed the "features and functionality of *any* enterprise configuration and/or compensation software programs that TCS develops and markets, including but not limited to the [seven] software programs listed." The subpoena also called for production

of a witness or witnesses to testify on all of the topics set forth in the subpoena duces tecum. On September 27, 2013, Versata sent TCS a revised list of document demands and deposition topics. (The revised topics and requests are attached hereto as Exhibit 1.)

In its motion to compel, Versata claims that the September Subpoena is necessary because it "needs to conduct a limited amount of deposition and document discovery concerning the functionality of TCS's enterprise compensation software products" (Motion at 2) in order to "show whether TCS develops enterprise compensation software that competes with Versata" (Motion at 3, 5). Versata, however, claims to already know that TCS is a competitor. Versata asserts that "TCS's website indicates that it develops enterprise compensation software that competes with Versata, and TCS has not denied that it competes with Versata in this industry niche." (Motion at 2.) Versata's counsel has also stated: "Our review of publicly [sic] available information relating to TCS's product offerings indicates that TCS does, in fact, develop its own enterprise compensation software." (See Exhibit 2, attached hereto.)

The September Subpoena, nevertheless, goes far beyond the stated purpose of attempting to prove that Versata and TCS are competitors. Instead, the information Versata seeks from TCS relates to the "features and functionality" of all compensation and configuration software that TCS develops or markets. (Exhibit 1.) This is proprietary trade secret information which should not be disclosed – especially because it is totally unrelated to the stated purpose of the September Subpoena.

The TCS Business And Its Proprietary Information

TCS is engaged in the business of providing consulting, development, system integration, applications maintenance, infrastructure support and other professional services and technology solutions in information technology, engineering, and IT enabled business process

services to customers around the globe. TCS service offerings include end-to-end outsourcing of IT, Engineering, IS and BPO services to customers. (Saxena Aff. ¶ 2.)

The details of services and products offered by TCS are available on the TCS website located at <http://www.tcs.com>. In addition to offering professional services, TCS also offers its proprietary software products, tools and solutions through licensing, implementation and maintenance services. TCS's website provides the information about the capabilities of proprietary products commercially offered by TCS. These products are grouped into three main categories: TCS BaNCS brand of products; TCS Mastercraft product; and TCS Technology products. (Saxena Aff. ¶ 3.)

In connection with the provision of its outsourcing services to customers TCS utilizes its own proprietary technology platform solutions such as TCS Human Capital Management Platform, TCS HRO Platform, TCS BPO Solutions, TCS Analytics Platform, and TCS Automotive Retail Accelerator Solution. These platform solutions are for internal use of TCS in its provision of outsourcing services and are not commercially offered to TCS customers. (Saxena Aff. ¶ 4.)

All TCS software, including the products listed above, and their features and functionality are proprietary and highly valuable to TCS. They have been developed through years of effort, varying from product to product, and indeed enhancements upgrades and refinement and development of these products is an on-going process. These products have been created at considerable expense to TCS. TCS has invested many millions of dollars into creating, modifying and further developing its offerings. (Saxena Aff. ¶ 10.)

The TCS software products listed above are invaluable to TCS as they represent a large part of TCS's business and the value that TCS delivers to the clients who hire it. (Saxena

Aff. ¶ 11.) The software code, design, architecture and other source material or documentation of TCS products are not disclosed or known to the public. Pursuant to license agreements with its clients, TCS may permit those clients to have access and use rights to TCS software. Also, typically, when a customer licenses a product, the license is for the object code version of the product and unless a customer has obtained a source material license, TCS does not provide its customers with any source material or related information. (Saxena Aff. ¶ 12.)

Access to the proprietary and confidential materials described above is only available to TCS employees on a strictly need-to-know basis and no employee is authorized to disclose proprietary information to third parties. (Saxena Aff. ¶ 13.) Disclosure of any non-public information about its proprietary software products as sought by Versata would cause irreparable harm to TCS. (Saxena Aff. ¶ 14.)

TCS has not and does not offer any software products in North America that has as its primary function to perform commission and compensation calculations. (Saxena Aff. ¶ 7.) TCS has never offered its products to a customer to replace Versata software. Nor has TCS has found itself competing with Versata for any opportunities with a prospective or existing customer in promoting TCS' product offerings. Other than this litigation, TCS is not familiar with Versata and does not consider Versata its competitor in any segment of marketplace.

(Saxena Aff. ¶ 9.)

Counsel For TCS And Versata Agree That Objections To The September Subpoena Could Be Filed On November 22, 2012

At the time Versata filed its motion to compel, it argued that TCS had waived any objections to its discovery requests because TCS allegedly did not timely raise any objections. Versata made that argument despite communications between the parties that showed that Versata had extended TCS's deadline to respond and subsequently provided a letter response

which detailed its objections to producing documents and a witness. In any event, Versata has since abandoned its waiver argument, agreeing in open Court on November 15, 2013 that TCS could formally provide its objections, if any, to the September Subpoena by November 22, 2013. TCS has done so and the waiver argument is now moot.²

ARGUMENT

I. The September Subpoena Should Be Quashed

A. The September Subpoena Seeks Cumulative And Duplicative Evidence

Versata claims to need the information sought in the September Subpoena in order to “show whether TCS develops enterprise compensation software that competes with Versata.” (Mot. at 3, 5.) Pursuant to Rule 192.4 of the Texas Rules of Civil Procedure, the September Subpoena should be quashed, however, because “the discovery sought is unreasonably cumulative or duplicative” and “is obtainable from some other source that is more convenient, less burdensome, [and] less expensive.” *See also In re Commitment of Hinchey*, 2012 Tex. App. Lexis 7582, 4, 2012 WL 3853186 (Tex. App. Beaumont Sept. 6, 2012) (“Even if the discovery Hinchey sought is within the scope of discovery authorized by the Texas Rules of Civil Procedure, the hearing reflects that the trial court could have reasonably decided that Hinchey had the information, if relevant, from other sources already available to him....”)

Here, Versata claims to already know that TCS “develops enterprise compensation software that competes with Versata.” Information regarding TCS products is also publicly available on the TCS website. Thus, there is no need to demand production of documents and a witness from TCS concerning its proprietary information, including the features

² TCS continues to maintain that there was no waiver but given the agreement of the parties, a more detailed discussion of the facts as they concern the waiver argument is unnecessary. Should the Court require additional information on the communications between the parties which demonstrate there was no waiver, TCS will provide it.

and functionality of TCS products, simply to establish facts that Versata already claims it knows and can attempt to prove with publicly available information.

Moreover, TCS has submitted herewith an affidavit which discloses TCS's business and product offers, and confirms that TCS does not consider Versata a competitor. Thus, nothing more would be gained from compelling production of TCS's proprietary information or requiring a TCS representative to sit for a deposition.

B. The September Subpoena Is Overly Broad and Unduly Burdensome

Discovery should be limited where, as here, "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues." Tex. R. Civ. P. 192.4; see also *In re Weekly Homes, L.P.*, 295 S.W.3d 309, 317 (Tex. 2009) (original proceeding). Moreover, discovery should be denied where the request "could have been more narrowly tailored to avoid including tenuous information and still obtain the necessary, pertinent information." *In re CSX Corp.*, 124 S.W.3d 149, 153 (Tex. 2003).

Unlike the requests in the February Subpoena which were narrowly tailored to the issues in the case, the September Subpoena goes far afield seeking documents relating to the entire suite of TCS products and seeking technical trade secret information which is wholly unnecessary and completely unrelated to Versata's stated purpose for serving the subpoena which was to establish whether TCS and Versata were competitors. Moreover, the accompanying affidavit from TCS establishes that the documents and information which Versata seeks simply do not exist TCS does not compete with Versata. Thus, in light of these facts,

requiring TCS to comply with the September Subpoena, even as modified by Versata, would be unduly burdensome and result in a production that is overly broad.

C. The September Subpoena Is An Impermissible Fishing Expedition

The Texas Supreme Court has “repeatedly emphasized that discovery may not be used as a fishing expedition. Rather, requests must be reasonably tailored to include only matters relevant to the case.” *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998) (citations omitted). “Because discovery is limited to matters that are relevant to the case, requests for information that are not reasonably tailored as to time, place, or subject matter amount to impermissible ‘fishing expeditions.’” *In re Lowe’s Companies, Inc.*, 134 S.W.3d 876, 879 (Tex. App. 2004). A “fishing expedition is one aimed not at supporting existing claims but at finding new ones.” *In re Sears, Roebuck & Co.*, 123 S.W.3d 573, 578 (Tex. App. 2003); *see also* 31 Tex. Jur. 3d Discovery and Depositions § 20 (“[D]iscovery requests must be reasonably tailored to the case, and requests for information that are not reasonably tailored as to time, place, or subject matter amount to impermissible ‘fishing expeditions.’”).

Here, it is apparent that Versata’s discovery requests and deposition are not reasonably tailored to include only matters relevant to its claims against Ameriprise. The requests seek proprietary information about all of TCS’s products. Versata should not be permitted to “fish” for information from a non-party that it could use to drum up new claims.

D. The September Subpoena Seeks Privileged Trade Secret Information

The September Subpoena should also be quashed because it seeks trade secret information from TCS. *See Tex. R. Evid. 507.* “Rule 507 requires the party resisting discovery to first establish that the information sought constitutes a trade secret. The burden then shifts to the requesting party to establish that the information is necessary for a fair adjudication of its

claim or defense. A trial court abuses its discretion if it orders disclosure of trade secrets when the requesting party has not carried its burden to show the information is necessary for a fair adjudication of its claim." *In re Goodyear Tire & Rubber Co.*, 392 S.W.3d 687, 693 (Tex. App. 2010) (citations omitted). Courts weight six factors to determine whether a trade secret exists: "(1) the extent to which the information is known outside of the business; (2) the extent to which the information is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and to its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." *In re Goodyear Tire & Rubber Co.*, 392 S.W.3d at 693.

Here, TCS has established that the information sought in the September Subpoena are TCS trade secrets. TCS does not allow the public access to information concerning the specific features or functionality of its software products and does not disclose such information to any competitors. Only paying customers are entitled access to TCS software products pursuant to the specific terms of their license agreement. Even TCS employees only have access to the software on a need-to-know basis. TCS spent many years and millions of dollars to develop its software products and this information could not be easily developed by others. TCS's software, and details about its features and functionality, is incredibly valuable to TCS and its disclosure would be severely detrimental to TCS's business. (See Saxena Affidavit.)

II. TCS Has Not Waived Its Objections To The September Subpoena

Counsel for Versata and TCS agreed on the record that TCS could file its objections to the September Subpoena by November 22, 2013. TCS has done so and its objections are, therefore, preserved and any argument otherwise is moot.

Dec. 2. 2013 11:37AM Howry Breen & Herman, LLP

No. 6125 P. 12/23

CONCLUSION

For the reasons set forth above, TCS requests that this Court deny Versata's motion to compel in its entirety and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

HOWRY BREEN & HERMAN, L.L.P.

/s/ Timothy J. Herman

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**Attorneys for Tata Consultancy
Services, Ltd., Non-Party**

Dec. 2. 2013 11:37AM Howry Breen & Herman, LLP

No. 6125 P. 13/23

CERTIFICATE OF SERVICE

I certify that on the 2nd day of December, 2013, I sent a true and complete copy of this pleading via electronic filing and/or facsimile to the following persons in accordance with the Texas Rules of Civil Procedure.

Peter M. Lancaster
Heather D. Redmond
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Steve McConnico
Christopher D. Silcox
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Demetrios Anaipakos
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/s/ Tim Herman

Tim Herman

Dec. 2, 2013 11:37AM Howry Breen & Herman, LLP

No. 6125 P. 14/23

EXHIBIT 1

Steiner, Robert

From: Steve Mitby <smitby@AZALAW.COM>
Sent: Friday, September 27, 2013 4:04 PM
To: Steiner, Robert
Subject: Versata/TCS subpoena

Rob,

Further to my email of yesterday, here is a narrower list of deposition topics and document requests that we will be able to agree on if we can depose TCS's corporate representative relatively soon. Please look at these topics/requests and tell me if you have any questions. Have a safe trip to India.

Thanks,

Steve

1. Testimony identifying the names of the software programs that TCS develops and markets that perform enterprise compensation and/or configuration functions.
2. Testimony concerning the features and functionality of any enterprise compensation and/or configuration software that TCS develops and markets.
3. Production of technical documents sufficient to identify the features and functionality of any enterprise compensation and/or configuration software that TCS develops and markets.
4. Production of advertising, marketing, white paper, and website documents that refer to the features and functionality of any enterprise compensation and/or configuration software that TCS develops and markets.
5. For purposes of the foregoing, enterprise compensation software includes, but is not limited to, the following software products: TCS Human Capital Management Platform, TCS HRO Platform, TCS BPO Solutions, TCS Analytics platform, TCS Automotive Retail Accelerator Solution, TCS Hosted OSS/BSS, TCS BaNCS and the Insurance, Property & Casualty, and Life & Pension Solutions from TCS BaNCS.

Dec. 2. 2013 11:37AM Howry Breen & Herman, LLP

No. 6125 P. 16/23

Steven J. Mitby
Partner
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C.
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Houston, Texas 77010
713-600-4910

Dec. 2. 2013 11:37AM Howry Breen & Herman, LLP

No. 6125 P. 17/23

EXHIBIT 2

Dec. 2. 2013 11:37AM Howry Breen & Herman, LLP

No. 6125 P. 18/23

AHMAD
ZAVIISANOS
ANAIPAKOS
ALAVI
MENSING



STEVEN MINDY
DIRECT 713.600.4910
MAIN 713.655.1101
FAX 713.655.0062
SMINDY@AZALAW.COM

October 23, 2013

Via Email: rsteiner@kelleydrye.com

Robert I. Steiner
Kelle, Drye & Warren LLP
101 Park Avenue
New York, New York 10178

Re: Cause No. D-1-GN-12-003588; *Versata Software, Inc., f/k/a Trilogy Software, Inc., et al v. Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and Ameriprise Investment Services, Inc.*; In the 53rd Judicial District Court of Travis County, Texas

Dear Rob:

Your letter appears to reflect a complete reversal of TCS's position that you expressed during our telephone conversations on September 24, 2013 and September 27, 2013. During those discussions, you said that TCS intended to produce documents and present a corporate representative witness for deposition, while reserving TCS's objections with respect to the scope of Versata's individual requests. You requested that we narrow the subpoenas to make it easier to reach agreement on the subpoena, which we did based on your assurances that TCS would cooperate with Versata. Now, it appears that TCS is declining to comply with any part of the subpoenas. This is inconsistent with our negotiations.

Furthermore, your letter is based on a fundamental misunderstanding of the purpose of the subpoena and TCS's relevance to the Ameriprise litigation. The 1999 Master License Agreement between ("MLA") Ameriprise and Versata limits users of DCM to "Permitted contractors" a term which is defined as companies "who do not . . . compete with [Versata] in the development of enterprise compensation or configuration software." Our review of publicly available information relating to TCS's product offerings indicates that TCS does, in fact, develop its own enterprise compensation software.

Based on your responses to our February 1, 2013 subpoena, as well as testimony developed in the Ameriprise case, it is evident that TCS was permitted to use DCM by Ameriprise. For example, TCS assisted in the DCM upgrade at Ameriprise in 2011, a project which would have required TCS to have access to Versata's DCM object code.

ATTORNEYS AT LAW | 1221 McKinney, Suite 346D | Houston, Texas 77010 | AZALAW.COM

Dec. 2. 2013 11:38AM Howry Breen & Herman, LLP

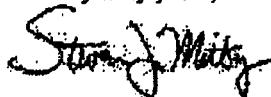
No. 6125 P. 19/23

Robert I. Steiner
October 24, 2013
Page 2

Therefore, Versata believes that TCS is not a permitted contractor under the MLA and that Ameriprise is in breach of the MLA for this reason.

While we are open to discussing a reasonable schedule for TCS to comply with Versata's subpoena, we are not willing to withdraw the subpoenas. In addition, TCS did not object to the subpoena duces tecum or the deposition notice, and therefore has waived any objection to the scope and content of the subpoena as issued. For this reason, we expect that a court will compel TCS to comply with the subpoena in its entirety if Versata is forced to file a motion. We request that TCS reconsider its position so that we may resolve this issue cooperatively.

Very truly yours,



Steven J. Milby

SJM/nm

4846-7532-0598, v. 2

Dec. 2. 2013 11:38AM Howry Breen & Herman, LLP

No. 6125 P. 20/23

No. D-1-GN-003588

**VERSATA SOFTWARE, INC., F/K/A
TRILOGY SOFTWARE, INC.; and
VERSATA DEVELOPMENT GROUP,
INC., F/K/A TRILOGY DEVELOPMENT
GROUP, INC.,**

Plaintiffs,

-against-

**AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL SERVICES,
INC., AMERICAN ENTERPRISE
INVESTMENT SERVICES, INC.,**

Defendants.

**IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
53rd JUDICIAL DISTRICT**

AFFIDAVIT OF ASHVINI SAXENA

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.

1. My name is ASHVINI SAXENA and I am the Head of TCS Financial Solutions for Americas of Tata Consultancy Services, Ltd. ("TCS"), a non-party to this action.

2. TCS is engaged in the business of providing consulting, development, system integration, applications maintenance, infrastructure support and other professional services and technology solutions in information technology, engineering, and IT enabled business process services to customers around the globe. TCS service offerings include end-to-end outsourcing of IT, Engineering, IS and BPO services to customers.

3. The details of services and products offered by TCS are available on the TCS website located at <http://www.tcs.com>. In addition to offering professional services, TCS also offers its proprietary software products, tools and solutions through licensing,

implementation and maintenance services. TCS's website provides the information about the capabilities of proprietary products commercially offered by TCS. These products are grouped into three main categories: TCS BaNCS brand of products; TCS Mastercraft product; and TCS Technology products.

4. In connection with the provision of its outsourcing services to customers TCS utilizes its own proprietary technology platform solutions such as TCS Human Capital Management Platform, TCS HRO Platform, TCS BPO Solutions, TCS Analytics Platform, and TCS Automotive Retail Accelerator Solution. These platform solutions are for internal use of TCS in its provision of outsourcing services and are not commercially offered to TCS customers.

5. Versata has asked for information about the following: TCS Human Capital Management Platform, TCS HRO Platform, TCS BPO Solutions, TCS Analytics platform, TCS Automotive Retail Accelerator Solution, TCS Hosted OSS/BSS, and TCS BaNCS and the Insurance, Property & Casualty, and Life & Pension Solutions from TCS BaNCS. As stated in paragraph 4 above, TCS Human Capital Management Platform, TCS HRO Platform, TCS BPO Solutions, TCS Analytics platform, TCS Automotive Retail Accelerator Solution and other technology platforms are used by TCS in its provisions of services. These platforms by themselves are not commercially offered products.

6. TCS's BaNCS range of products are mainly software products offered to banking, financial and insurance sector customers. These are extremely large and complex software systems with multiple modules which perform a vast amount of functions. Reasonably detailed information about the functions and features of these products is available on the TCS website.

7. I am informed that Versata's objective in seeking documents and information from TCS and obtaining a deposition of a TCS representative is to verify whether TCS offers enterprise compensation software that competes with Versata. Based on my review of TCS files and conversations with relevant TCS employees, I state that to the extent that Versata's reference to enterprise compensation software is to software primarily performing commission and compensation calculations for companies in the insurance and financial services industry, or in other industries, I have determined that TCS has not and does not offer any software products in North America that has as its primary function to perform commission and compensation calculations.

8. As I have stated in paragraph 6 above, some of the TCS BaNCS products have multiple modules and functions. While it is possible that as part of that much larger system, there could be some elements of these products which would be capable of performing commission calculations, these products are not offered mainly or only for that purpose, and such capabilities, if they exist, would be incidental at best.

9. I am not aware of any instance in which TCS has offered its products to a customer to replace Versata software. Nor am I aware of any instance in which TCS has found itself competing with Versata for any opportunities with a prospective or existing customer in promoting TCS' product offerings. Other than our understanding that Versata is engaged in litigation with Ameriprise and with certain other companies, TCS is not familiar with Versata and does not consider Versata its competitor in any segment of marketplace.

10. All TCS software, including the products listed above, and their features and functionality are proprietary and highly valuable to TCS. They have been developed through years of effort, varying from product to product, and include enhancements upgrades and

refinement and development of these products is an on-going process. These products have been created at considerable expense to TCS. I would estimate that TCS has invested many millions of dollars into creating, modifying and further developing its offerings.

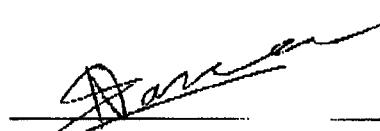
11. The TCS software products listed above are invaluable to TCS as they represent a large part of TCS's business and the value that TCS delivers to the clients who hire it.

12. The software code, design, architecture and other source material or documentation of TCS products are not disclosed or known to the public. Pursuant to license agreements with its clients, TCS may permit those clients to have access and use rights to TCS software. Also, typically, when a customer licenses a product, the license is for the object code version of the product and unless a customer has obtained a source material license, TCS does not provide its customers with any source material or related information.

13. Access to the proprietary and confidential materials described above is only available to TCS employees on a strictly need-to-know basis and no employee is authorized to disclose proprietary information to third parties.

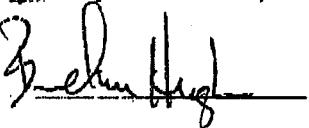
14. Disclosure of any non-public information about its proprietary software products as sought by Versata would cause irreparable harm to TCS.

15. If indeed Versata views itself as a competitor of TCS, this would be all the more reason why TCS should not be compelled to provide Versata with non-public TCS proprietary information.



Astuvini Saxena

Sworn to before me this
27th day of November, 2013



BRENDAN HUGHES
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02106287828
Qualified in Nassau County
Commer... Expires August 26, 2017



Deposition and Litigation Services
www.hglitigation.com 1-888-656-DEPO (3376)

December 11, 2013

Filed in The District Court
of Travis County, Texas

DEC 16 2013 IS

At 11:00 A.M.
Amalia Rodriguez-Mendoza, Clerk

VIA CERTIFIED MAIL
Amalia Rodriguez-Mendoza
Travis County District Clerk
PO Box 679003
Austin, TX 78767

Re: Deposition of Ryan Macomb Vol II
Deposition Date: 10/08/2013
Versata Software, Inc., et al v Ameriprise Financial, Inc. et al
Cause No.: D-1-GN-003588

Dear Amalia Rodriguez-Mendoza:

Enclosed for filing, please find the Court Reporter Certificate Page:

X As of today's date our office has not received the witness errata & signature page.

- Errata with changes (Copy/Original)
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- Errata without changes
FedEx/UPS/CMRRR/USPS>Email *For office use only*
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Please do not hesitate to contact our office should you need further assistance.

Respectfully yours,

Amanda Reyes
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Deposition and Litigation Services

www.hglitigation.com

1-888-656-DEPO (3376)

October 17, 2013

Heather Redmond
Dorsey & Whitney, LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

Re: Deposition of Ryan Macomb Vol II
Deposition Date: 10/08/2013
Versata Software, Inc., et al v Ameriprise Financial, Inc. et al
Cause No.: D-1-GN-003588

Dear Heather Redmond:

Please have your client read and sign the attached Oral Deposition, making any necessary changes on the errata sheet that is provided.

Please return the original errata and witness signature page to the office listed below within twenty (20) days or before November 6, 2013 for filing, as agreed by the parties.

If we can be further assistance to you, please do not hesitate to contact our office.

Respectfully yours,

Amanda Reyes
HG Litigation Services
1-888-656-DEPO

DH/ar
Enclosure

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2501 Oak Lawn Avenue, Suite 600 • Dallas, Texas 75219

193522

RICHARD RYAN MACOMB VOLUME 2 - CONFIDENTIAL - AEO

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1 REPORTER'S CERTIFICATE

2 Be it known that I, Hartman L. Erickson, took
3 the foregoing videotaped deposition of RICHARD RYAN
4 MACOMB, Volume II;

5 That the witness, before testifying, was first
6 duly sworn as to the whole truth and nothing but the
7 truth relative to said cause;

8 That the testimony of said witness was recorded
9 in shorthand by me and transcribed by me and that the
10 foregoing deposition is a true record of the
11 testimony given by said witness, and that the reading
12 and signing of the foregoing deposition by said
13 witness was not waived by the witness and respective
14 counsel;

15 That I am not related to any of the parties
16 hereto, nor an employee of them, nor interested in
17 the outcome of the action, and that the cost of the
18 original has been charged to the party who noticed
19 the deposition, and all parties who ordered copies
20 have been charged at the same rate for such copies.

21 WITNESS MY HAND AND SEAL this 13th day of
22 October 2013.

23 
24 Hartman L. Erickson, Notary Public
Dakota County, Minnesota
25 My Commission Expires January 31, 2015
Firm No. Dallas: 69 Houston: 373

CAUSE NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., F/K/A TRILOGY SOFTWARE, INC.; and VERSATA DEVELOPMENT GROUP, INC., F/K/A TRILOGY DEVELOPMENT GROUP, INC.	§	IN THE DISTRICT COURT
	§	
	§	
	§	
	§	
	§	
Plaintiffs,	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
	§	
AMERIPRISE FINANCIAL, INC., AMERIPRISE FINANCIAL SERVICES, INC., AMERICAN ENTERPRISE INVESTMENT SERVICES, INC.	§	
	§	
	§	
	§	
	§	
	§	53rd JUDICIAL DISTRICT
Defendants.	§	
	§	

**PLAINTIFFS' SECOND AMENDED PETITION AND
APPLICATION FOR TEMPORARY INJUNCTION**

Plaintiffs Versata Software, Inc., f/k/a Trilogy Software, Inc. and Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc. (collectively "Versata") respectfully file this Second Amended Petition against Defendants Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and American Enterprise Investment Services, Inc. (collectively, "Ameriprise").

DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190.3, Versata intends to conduct discovery under Level 2.

PARTIES

2. Plaintiff Versata Software, Inc., f/k/a Trilogy Software, Inc., is a Delaware corporation with its principal place of business at 401 Congress, Suite 2650, Austin, Texas 78730.

3. Plaintiff Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc., is a Delaware corporation with its principal place of business at 401 Congress, Suite 2650, Austin, Texas 78730.

4. Defendant Ameriprise Financial, Inc. is a Delaware corporation with its principal place of business at 1099 Ameriprise Financial Center, Minneapolis, MN 55474.

5. Defendant Ameriprise Financial Services, Inc. is a Delaware corporation with its principal place of business at 707 2nd Ave. South, Minneapolis, MN 55474.

6. Defendant American Enterprise Investment Services, Inc. is a Minnesota corporation with its principal place of business at 200 Ameriprise Financial Center, Minneapolis, Minnesota 55474.

JURISDICTION AND VENUE

7. This Court has general jurisdiction over Defendants because they have continuous and systematic contacts with Texas. Among other things, Defendants have property and employees throughout Texas; Defendants handle millions of dollars in financial transactions each year in Texas; and Defendants regularly conduct business throughout the state.

8. This Court has specific jurisdiction over Defendants because the contract at issue was wholly or partially negotiated in Texas; the software at issue was developed in Texas; the parties' relationship centers around Texas; and Defendants have used the software to process compensation paid to Texas.

9. This Court has subject matter jurisdiction because the amount in controversy exceeds the jurisdictional requirements of this Court.

VENUE

10. In accordance with Section 15.002 of the Texas Civil Practice and Remedies Code, venue is proper in Travis County, Texas because all or a substantial part of the events or omissions giving rise to the claim occurred in Travis County and Versata's principal office is in Travis County.

FACTS

Introduction

11. This case is about Ameriprise's conscious decision to ignore its contractual obligations to Versata in order to save money by using low-cost consultants from Infosys and Tata Consultancy Services ("TCS"). Despite clear contractual language that prohibits Ameriprise from giving Versata's direct competitors access to Versata's proprietary software, Ameriprise did just that, and jeopardized Versata's intellectual property, in order to drive down its IT costs. Versata's initial complaint about the use of unauthorized contractors was met with no action. After Versata discovered that Infosys had decompiled its software, Versata escalated its complaints about the use of unauthorized contractors.

12. Ameriprise feigned concern about Versata's concerns and asked for patience while it transitioned away from the unapproved contractors. Believing that Ameriprise was sincere in its statements that it would honor its contract, Versata worked with Ameriprise for nearly two years to secure such a transition. But late in 2012 Versata discovered that the scope of Infosys' theft was unprecedented: Versata discovered that Infosys had secreted 5,000 decompiled source code files on a laptop in India. At the same time, after two years, Ameriprise claimed that that last remaining Infosys contractors, including those who had decompiled Versata's software, were

too valuable to eliminate. Faced with the unmistakable reality that Ameriprise had no intention of honoring its contract, Versata terminated Ameriprise's license to Versata's software.

13. After termination of its license, Ameriprise again demonstrated its clear disregard for Versata's intellectual property rights. Rather than return Versata's software, as required under its license, Ameriprise has continued to use Versata's software *without a license*. To justify its conduct, Ameriprise has manufactured various theories as to why it should be allowed to use Versata's property, without a license and for free. To make matters worse, Ameriprise continued to use Infosys to work on Versata's software, even after the termination of its license and the filing of this lawsuit. In fact, Ameriprise uses the very Infosys employees who stole Versata's intellectual property, to work on Versata's software. Enough is enough and Versata seeks a judicial determination that Ameriprise is not licensed to use Versata's software and must cease doing so.

Ameriprise and Versata Enter into a License to Versata Enterprise Software

14. Versata is a leading provider of software to businesses throughout the United States.

15. Versata has developed an enterprise software solution called Distribution Channel Management ("DCM") for financial service customers. DCM simplifies and streamlines compensation administration to allow financial service customer employees to sell products, track transactions, ensure regulatory eligibility and be compensated for their efforts. Versata owns all title and rights to this software.

16. Ameriprise is one of the country's largest financial services companies and has \$631 billion in assets under management. With a network of approximately 10,000 advisors throughout the United States, Ameriprise provides a wide variety of investment, annuity, insurance, banking and other financial products to customers.

17. Because of its large number of commission-based agents, Ameriprise sought to develop an enterprise software solution to assist it in managing its agents and their compensation.

18. Versata and Ameriprise entered into a Master License Agreement ("MLA") dated October 4, 1999 to license Versata's DCM software to Ameriprise. Because the specific terms of the MLA are confidential, a copy is not attached to this pleading.

19. Versata has provided the DCM software to Ameriprise as well as maintenance and support services and consulting services to assist Ameriprise in implementing DCM.

20. Under the MLA, Versata's software, product documentation, and related materials are strictly confidential (§ 10.2) and the property of Versata (§ 4.9).

21. Under the MLA, Ameriprise agreed to limit access to the software, product documentation, and related materials to Ameriprise employees and "Permitted Contractors" - i.e., contractors that do not compete with Versata in the development of enterprise compensation or configuration software and that have signed a non-disclosure agreement (§ 4.8).

22. The MLA strictly prohibits any kind of copying, decompiling, or reverse engineering of Versata's software by Ameriprise or its agents (§ 10.1).

23. A breach of these confidentiality or anti-decompiling requirements is sufficient grounds for Versata to terminate the MLA and revoke Ameriprise's license to the software (§ 12.2).

24. If Versata terminates the MLA for any breach by Ameriprise, Ameriprise's rights in the software shall cease, Ameriprise must return the software to Versata, and Ameriprise must certify in writing that it has destroyed or returned all copies (§ 12.2).

Ameriprise's Use of Infosys

25. In an effort to reduce costs, Ameriprise has used third-party contractors, including Infosys to perform maintenance and customization work in its IT department. Despite the fact that such third-parties offer lower hourly rates both in the United States and offshore in countries such as India, Ameriprise continued to use Versata to provide customization and other consulting services.

26. One of the third-party providers that Ameriprise has used is Infosys—an outsourcing services provider based in Bangalore, India—to perform maintenance and customization work on Versata's proprietary software.

27. On or around November 2009, Infosys acquired McCamish Systems, a company that develops and sells enterprise compensation software called PMACS that competes with Versata's DCM product. Following the acquisition, Infosys became a company that competes with Versata in the development of enterprise compensation and configuration software.

28. In early 2010, Versata raised its concerns about Infosys and the McCamish acquisition to Ameriprise. Ameriprise employees such as Ryan Macomb and Ken Bridgeman had actual knowledge that Infosys had acquired McCamish and that Versata believed that as a result of the acquisition Infosys was a competitor and therefore not a Permitted Contractor.

29. Despite having knowledge of Versata's concerns, Ameriprise took no initial steps to remove Infosys from accessing DCM.

30. In the summer of 2010, Versata learned that Infosys employees had decompiled several of Versata's DCM software files. Given Versata's previous concerns about Infosys' role as a competitor, Versata raised the issue of decompiling and Infosys again to Ameriprise employees and escalated the issue of Ameriprise's use of Infosys on DCM.

31. In response to Versata's concerns, Ameriprise assured Versata that they would take the Infosys issue seriously. Over the next two years, Versata engaged in continued dialogue with Ameriprise about removing Infosys contractors from DCM. Over that time, Ameriprise created the false impression that it would ultimately remove all Infosys personnel from DCM but that it needed time to do so because of the difficulty in finding replacement resources. Based on those assurances, including actual efforts by Ameriprise to reduce the number of Infosys employees using DCM, Versata worked diligently with Ameriprise to assist them in eliminating Infosys' access to DCM.

32. Throughout this process, Ameriprise raised concerns about the cost of removing Infosys because it was a low cost provider. To address those concerns, Versata engaged in dialogue with Ameriprise about business solutions to its issues.

Ameriprise's Use of TCS

33. In mid to late 2011, Versata learned that Ameriprise was replacing Infosys contractors who were working on DCM with contractors from TCS. Like Infosys, TCS is a company that competes with Versata in the development of enterprise compensation software. As a result, TCS is not a Permitted Contractor under the MLA.

34. On or around August 11, 21011, Versata informed Ameriprise that under the MLA Ameriprise could not replace Infosys with TCS because TCS was not a Permitted Contractor.

35. In response, Ameriprise took the position that it could continue to use TCS and that TCS was not Versata's competitor in the development of enterprise compensation software.

The Versata/Infosys Lawsuit

36. In order to protect its intellectual property, Versata filed a lawsuit against Infosys over Infosys' decompilation of Versata software and misappropriation of trade secrets. When

Versata first filed that lawsuit, it had no idea of how extensive Infosys' theft of its intellectual property actually was.

37. Through the litigation, Versata began to learn the scope of Infosys' theft. Versata learned that Infosys decompiled or copied more than 5,000 Versata source code files while working at Ameriprise, transported those files to India, and stored them on hard drives in Bangalore.

Versata Sends Ameriprise a Notice of Breach

38. The disclosure of the scale of Infosys' theft coincided with Ameriprise's notification to Versata that it would not be eliminating all of the Infosys contractors who were working on DCM. In contrast to the discussions the prior two years about removing Infosys, Ameriprise informed Versata that it could not eliminate certain Infosys contractors because of their knowledge base was so great, they would be difficult to replace. The irony of that decision is that these very employees had such an extensive knowledge base because they had engaged in the decompiling of Versata's software.

39. Faced with the daunting reality that Ameriprise was not serious about protecting Versata's intellectual property, Versata sent a letter to Ameriprise providing the contractually mandated 30 day notice of breach of the MLA on September 17, 2012.

40. The letter identified multiple breaches of the MLA by Ameriprise related to Infosys's and TCS's unauthorized access to Versata's software, including the fact that neither Infosys nor TCS were permitted contractors under the MLA. Versata further stated that if Ameriprise did not take steps to cure these breaches, the MLA would terminate automatically within thirty days.

41. Because Ameriprise did not cure these violations, the MLA terminated on October 17, 2012.

42. Ameriprise has refused to return Versata's software and other confidential information to Versata as required by the MLA.

43. Today, Ameriprise is using Versata's software and other confidential information without authorization.

Conditions Precedent

44. All conditions precedent have been met or observed.

CAUSES OF ACTION

A. Breach of Contract (Non-Permitted Contractor)

45. Versata incorporates the foregoing paragraphs as if fully set forth here.

46. Versata and Ameriprise entered into a Master License Agreement effective October 4, 1999.

47. The MLA prohibits Ameriprise from using third-parties, which are not permitted contractors or third-parties that have not signed non-disclosure agreements.

48. Ameriprise has breached this provision of the MLA and consequently Versata terminated the MLA effective October 17, 2012.

49. The MLA requires Ameriprise to stop using Versata's software and confidential information, to return all of this software and other confidential information to Versata, and to certify that it has destroyed or returned any copies.

50. Ameriprise has unjustifiably refused to comply with this requirement and therefore is in breach of the MLA.

51. Ameriprise's breaches—coupled with its continued refusal to stop providing Infosys and TCS with access to Versata's software and other confidential information—create a high risk of irreparable harm to Versata.

B. Specific Performance

52. Versata incorporates the foregoing paragraphs as if fully set forth here.

53. The MLA requires Ameriprise to stop using Versata's software and confidential information, to return all of this software and other confidential information to Versata, and to certify that it has destroyed or returned any copies. This obligation survives Versata's rightful termination of the contract.

54. To date Ameriprise has refused to stop using Versata software and confidential information, has refused to return the software and other confidential information to Versata and has not certified that it has destroyed or returned any copies.

55. Versata would therefore ask the court to order Ameriprise to specifically perform these obligations under the MLA.

C. Declaratory Judgment

56. Versata incorporates the foregoing paragraphs as if fully set forth here.

57. For the reasons set forth above, Versata seeks a declaration as follows:

(a) that Versata terminated the MLA pursuant to the terms of the MLA and that Ameriprise's license terminated on October 17, 2012;

(b) TCS and Infosys are not a Permitted Contractors under the MLA (§ 4.8); and

(c) that Ameriprise has breached the MLA (§ 12.2) by failing to stop using Versata's software, by failing to return this software and other confidential information to Versata, and by failing to certify that it has destroyed or returned any copies.

D. Attorneys' Fees

58. Versata incorporates the foregoing paragraphs as if fully set forth here.

59. As a result of Ameriprise's wrongful conduct, Versata has been required to retain counsel to prosecute this action. Consequently, in accordance with Sections 37.009 and 38.001

of the Texas Civil Practice and Remedies Code, Versata is entitled to recover its costs and reasonable and necessary attorney's fees from Ameriprise.

Application for Permanent Injunction

60. Versata incorporates the foregoing paragraphs as if fully set forth here.
61. Versata requests a permanent injunction ordering Ameriprise (a) to cease using Versata's enterprise software and confidential information, including any source code, object code, product documentation, or other materials provided to Ameriprise by Versata; and (b) to return to Versata or destroy all copies of Versata's enterprise software and confidential information, including any source code, object code, product documentation, or other materials related to Versata's enterprise software.

Jury Demand

62. Plaintiffs hereby demand a trial by jury and have tendered the appropriate fee.

PRAYER FOR RELIEF

For these reasons, Plaintiffs respectfully request that the Court:

- a. enter judgment in favor of Versata and against Ameriprise on all claims asserted by Versata;
- b. issue a judicial declaration that:
 - (i) that Versata terminated the MLA pursuant to the terms of the MLA and that Ameriprise's license terminated on October 17, 2012;
 - (ii) TCS and Infosys are not a Permitted Contractors under the MLA (§ 4.8); and
 - (iii) that Ameriprise has breached the MLA (§ 12.2) by failing to stop using Versata's software, by failing to return this software and other confidential information to Versata, and by failing to certify that it has destroyed or returned any copies.

- c. issue a permanent injunction ordering Ameriprise (i) to cease using Versata's enterprise software and confidential information, including any source code, object code, product documentation, or other materials related to Versata's enterprise software; and (ii) to return to Versata or destroy all copies of Versata's enterprise software and confidential information, including any source code, object code, product documentation, or other materials related to Versata's enterprise software;
- d. grant Versata specific performance;
- e. award Versata its reasonable and necessary attorney's fees and expenses;
- f. award Versata all costs of court; and
- g. grant all other relief, legal and equitable, to which Versata may show it is justly entitled.

Respectfully submitted,

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING,
P.C.

/s/ Amir H. Alavi

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Amir Alavi
State Bar No. 00793239
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon the following counsel of record via certified mail, return receipt requested on December 20, 2013:

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/s/ Amir H. Alavi
Amir H. Alavi

CAUSE NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., F/K/A TRILOGY SOFTWARE, INC.; and VERSATA DEVELOPMENT GROUP, INC., F/K/A TRILOGY DEVELOPMENT GROUP, INC.	§	IN THE DISTRICT COURT
Plaintiffs,	§	
v.	§	OF TRAVIS COUNTY, TEXAS
AMERIPRISE FINANCIAL, INC., AMERIPRISE FINANCIAL SERVICES, INC., AMERICAN ENTERPRISE INVESTMENT SERVICES, INC.	§	
	§	53rd JUDICIAL DISTRICT
Defendants.	§	

**PLAINTIFFS' SECOND AMENDED ANSWER, SPECIFIC DENIALS AND
AFFIRMATIVE DEFENSES**

Plaintiffs Versata Software, Inc., f/k/a Trilogy Software, Inc. and Versata Development Group, Inc., f/k/a Trilogy Development Group, Inc. (collectively "Versata") respectfully file this First Amended Answer to the Second Amended Counterclaims raised by Defendants Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and American Enterprise Investment Services, Inc. (collectively, "Ameriprise"). Plaintiffs state and allege as follows:

GENERAL DENIAL

Pursuant to Texas Rule of Civil Procedure 92, Plaintiff generally denies the allegations raised in Defendant's First Amended Counterclaim.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Ameriprise's claims are barred, in whole or in part, because Plaintiffs performed their contractual obligations.

SECOND DEFENSE

Ameriprise's claims are barred, in whole or in part, by Ameriprise's own breaches of the contract.

THIRD DEFENSE

Ameriprise's claims are barred, in whole or in part, by the doctrines of estoppel and waiver, including but not limited to contractual estoppel.

FOURTH DEFENSE

Ameriprise's claims are barred, in whole or in part, due to the applicable statutes of limitation.

FIFTH DEFENSE

Ameriprise's claims are barred, in whole or in part, due to laches and unreasonable delay in seeking recovery.

SIXTH DEFENSE

Ameriprise fails to state a claim, in whole or in part, upon which relief can be granted.

SEVENTH DEFENSE

Ameriprise's claims are barred, in whole or in part, by the doctrine of unclean hands.

EIGHTH DEFENSE

Ameriprise's claims are barred, in whole or in part, because Plaintiffs have cured any alleged breaches.

NINTH DEFENSE

Ameriprise's claims are barred in whole or in part because Ameriprise lacks standing to raise the claims.

TENTH DEFENSE

Ameriprise's claims are barred in whole or in part because they are preempted by Copyright law.

ELEVENTH DEFENSE

Ameriprise's claims are barred in whole or in part by the doctrine of election of remedies.

TWELFTH DEFENSE

Ameriprise's claims based upon the GNU GPL are barred in whole or in part because the alleged contract is void.

THIRTEENTH DEFENSE

Ameriprise's claims are barred in whole or in part by the doctrine of accord and satisfaction.

VERIFIED DENIALS

1. Ameriprise does not have the legal capacity to raise claims asserting violations of the alleged GPL between Ximpleware and Versata because Ameriprise is not a party to the GPL.

2. Ameriprise does not have the legal capacity to raise claims asserting violations of the alleged GPL between XimpleWare and Versata or to enforce the terms of the GPL because Ameriprise is not the owner of the copyright to the XimpleWare software.

3. To the extent that Ameriprise claims that the terms of the GPL, as opposed to the MLA govern the rights and obligations of Ameriprise and Versata as to each other, Versata denies that the GPL is the contract between Versata and Ameriprise.

4. Ameriprise has not satisfied all the conditions precedent required under the MLA to claim the relief it seeks. Specifically, Ameriprise (1) has not signed the escrow agreement necessary to allow Versata to escrow source code for Ameriprise; (2) did not provide notice of any breaches of the MLA prior to termination of the MLA; (3) has not provided notice with the

requisite specificity or in the manner required under the terms of the MLA, of the alleged breaches of the maintenance provisions of the MLA; (4) has not provided Versata an opportunity to cure the alleged breaches of the maintenance provisions of the MLA; (5) has not provided notice with the requisite specificity or in the manner required under the terms of the MLA, of alleged breaches of warranty; and (6) has not provided Versata with an opportunity to cure the alleged breaches of warranty.

5. Ameriprise's claims based upon the GNU GPL are barred because the alleged contract is without consideration.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court:

- a. enter judgment in favor of Versata and against Ameriprise on all claims asserted by Ameriprise;
- b. award Versata all costs of court; and
- c. grant all other relief to which Versata may show it is justly entitled.

Respectfully submitted,

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING,
P.C.

/s/ Amir H. Alavi

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon the following counsel of record via certified mail, return receipt requested on December 20, 2013:

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/s/ Amir H. Alavi
Amir H. Alavi

CAUSE NO. D-1-GN-12-003588

**VERSATA SOFTWARE, INC., F/K/A
TRILOGY SOFTWARE, INC.; and
VERSATA DEVELOPMENT GROUP,
INC., F/K/A TRILOGY DEVELOPMENT
GROUP, INC.**

IN THE DISTRICT COURT

Plaintiffs,
v.

OF TRAVIS COUNTY, TEXAS

**AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL SERVICES,
INC., AMERICAN ENTERPRISE
INVESTMENT SERVICES, INC.**

53rd JUDICIAL DISTRICT

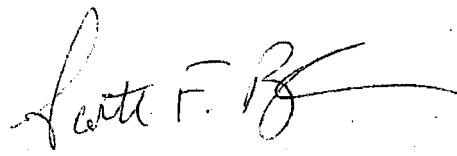
Defendants.

DECLARATION OF SCOTT BRIGHTON

1. "My name is Scott Brighton. I am over the age of 18, have never been convicted of a felony, and am in all ways competent to make this Declaration. I swear under penalty of perjury that the statements herein are true and correct and that they are based on my personal knowledge.

2. I have read the Verified denials contained within Plaintiffs' Second Amended Answer, Specific Denials and Affirmative Defenses. I have personal knowledge of the facts, if any, in the verified denials and that all such statements are true and correct.

I declare under penalty of perjury that the forgoing is true and correct.



Scott Brighton

Executed on the 19th day of December, 2013.

12/26/2013 9:55:11 AM
Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-12-003588

CAUSE NO. D-1-GN-12-003588

VERSATA SOFTWARE, IN.C, ET AL,
PLAINTIFF

VS.

AMERIPRISE FINANCIAL, INC., ET AL,
DEFENDANT

§
§
§ IN THE 53RD JUDICIAL DISTRICT COURT
§

§ TRAVIS COUNTY, TX
§
§

AFFIDAVIT OF SERVICE

ON Monday, December 23, 2013 AT 12:59 PM - SUBPOENA, PLAINTIFFS' NOTICE OF INTENTION TO TAKE ORAL AND VIDEO TAPE DEPOSITION OF IRON MOUNTAIN INCORPORATED, EXHIBIT A CAME TO HAND.

ON Monday, December 23, 2013 AT 02:46 PM - THE ABOVE NAMED DOCUMENTS WERE DELIVERED TO: IRON MOUNTAIN INCORPORATED, C/O REGISTERED AGENT CORPORATION SERVICE COMPANY DBA CSC-LAWYERS INCORPORATING SERVICE COMPANY, BY DELIVERING TO ITS DESIGNATED AGENT SUE VERTREES 211 E 7TH ST, STE 620, AUSTIN, TX, 78701 BY PERSONAL SERVICE.

My name is Barbara Stinnett. My business address is 1201 Louisiana, Suite 210, Houston, Texas 77002. I am a private process server authorized by and through the Supreme Court of Texas, SCH 1181, expires July 31, 2014, am in all ways competent to make this affidavit, and this affidavit is based on personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of Texas on December 24, 2013

/S/ Barbara Stinnett

12/23/2013 11:32:46 AM
Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-12-003588

NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., f/k/a
TRILOGY SOFTWARE, INC., and VERSATA
DEVELOPMENT GROUP, INC., f/k/a
TRILOGY DEVELOPMENT GROUP, INC.,

Plaintiffs,

v

AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL SERVICES, INC.,
AMERICAN ENTERPRISE INVESTMENT
SERVICES, INC.,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

53rd JUDICIAL DISTRICT

DEFENDANTS' FIRST SUPPLEMENTAL ANSWER

TO THE HONORABLE JUDGE OF THE COURT:

NOW COME Defendants Ameriprise Financial, Inc. ("Ameriprise"), Ameriprise Financial Services, Inc., and American Enterprise Investment Services, Inc. (collectively "Defendants") and file this First Supplemental Answer and state as follows.

AFFIRMATIVE AND SPECIFIC DEFENSES

Defendants plead the following defenses to Plaintiffs' claims. Defendants reserve the right to plead with greater particularity and to delete, add, or amend their defenses as the case progresses. Defendants' assertion of any defense is not an admission or concession that Defendants bear the burden of proof on any asserted defense. The burden of proof on any defense shall be determined by applicable law.

1. Defendants assert that Plaintiffs claims are barred, in whole or in part, because Versata's DCM Version 3.9 software licensed to Ameriprise is subject to and governed by Version 2 of the GNU General Public License and therefore Ameriprise is entitled, pursuant to

the terms of Version 2 of the GNU General Public License, to obtain and freely use the source code for DCM Version 3.9 subject to the terms and conditions of the GPL. Additional details of this claim are set forth in Ameriprise's June 21, 2012 expert disclosures for Dr. John Collins, the June 26, 2013 Deposition of Dr. John Collins, the Motion for Partial Summary Judgment filed by Defendants on July 24, 2013, and Defendants' Amended Counterclaim.

2. Defendants assert that Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' breach of the contract between Plaintiffs and Defendants.

3. Defendants assert that Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel (including quasi-estoppel, promissory estoppel and equitable estoppel). Defendants allege that the Complaint and each purported cause of action therein is barred, in whole or in part, because by their conduct, representations, and omissions, Plaintiffs are estopped from asserting any claim for relief against these Defendants respecting the matters which are the subject of the Complaint.

4. Defendants assert that Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver. Defendants allege that the Complaint and each purported cause of action therein is barred, in whole or in part, because by their conduct, representations, and omissions, Plaintiffs have voluntarily waived, relinquished, and/or abandoned all claims for relief against Defendants.

5. Defendants assert that Plaintiffs' claims are barred, in whole or in part, due to the applicable statutes of limitations.

6. Defendants assert that Plaintiffs' claims are barred, in whole or in part, due to laches and unreasonable delay.

7. Defendants assert that Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

8. Defendants assert that Plaintiffs' claims are barred, in whole or in part, by the doctrine of acquiescence.

9. Defendants assert that Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

10. Pleading in the alternative, Defendants assert that Plaintiffs' claims are barred, in whole or in part, by the doctrine of recoupment so as to lessen or defeat Plaintiffs' claims. Specifically, but without limiting this defense, Defendants assert that Plaintiffs breached their warranties to Defendant, that those warranties and Defendants' claim concerning those warranties arise from the same transaction as Plaintiffs' claims, and that the breach of warranty goes to the foundation of Plaintiffs' claims.

SPECIFIC DENIALS

1. Defendants deny that Plaintiffs have satisfied all conditions precedent to suit. Specifically, but without limitations, Defendants plead that Plaintiffs have failed to satisfy the condition precedent of providing notice to Defendants of any alleged breach of contract in the manner required by the contract and by applicable law. Defendants plead, without limitation, that Versata failed to provide notice of any of its claims to the proper parties required by the Parties' contract and failed in any purported notice sent to provide notice of all of the grounds for its claims and failed to provide a meaningful or genuine opportunity to cure any alleged breach as to those grounds cited in the purported notice. Further, Plaintiffs asked for a mediation in their purported notice letter, a mediation was commenced, and under applicable New York law a new notice must thereafter be sent. No such notice, purported or otherwise, was sent at all.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants pray that Plaintiffs take nothing by their suit, Defendants be awarded their costs of and Defendants have all other and further relief, at law or in equity, to which they be entitled.

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By /s/ Christopher D. Sileo

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record, as listed below on December 20, 2013.

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/s/ Christopher D. Sileo
Christopher D. Sileo

12/26/2013 4:25:04 PM
Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-12-003588

NO. D-1-GN-12-003588

VERSATA SOFTWARE, INC., f/k/a TRILOGY
SOFTWARE, INC., and VERSATA
DEVELOPMENT GROUP, INC., f/k/a
TRILOGY DEVELOPMENT GROUP, INC.,

Plaintiffs,

v

AMERIPRISE FINANCIAL, INC.,
AMERIPRISE FINANCIAL SERVICES, INC.,
AMERICAN ENTERPRISE INVESTMENT
SERVICES, INC.,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

53rd JUDICIAL DISTRICT

**DEFENDANTS' OBJECTIONS TO WRITTEN QUESTIONS TO CORPORATE
REPRESENTATIVE OF TATA CONSULTANCY SERVICES, LTD.**

Pursuant to Texas Rule of Civil Procedure 200.3, Defendants Ameriprise Financial, Inc., Ameriprise Financial Services, Inc. and American Enterprise Investment Services, Inc. (collectively "Ameriprise") hereby provide their objections to the deposition on written questions of the Corporate Representative of Tata Consultancy Services, Ltd. as follows:

Objections:

6. Objection, form (vague and ambiguous, incomplete, lacks foundation and calls for speculation).
7. Objection, form (vague and ambiguous).
10. Objection, form (vague).
11. Objection, form (outside the scope).

Respectfully submitted,

SCOTT, DOUGLASS & McCONNICO, LLP

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**ATTORNEYS FOR COUNTERCLAIMANT
AND DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record, as listed below on December 26, 2013.

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/s/ Christopher D. Sileo
Christopher D. Sileo

- LEELA KAZA
CONFIDENTIAL TRANSCRIPT

9/27/2013

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1 CAUSE NO. D-1-GN-12-003588
2 VERSATA SOFTWARE, INC.,) IN THE DISTRICT COURT
f/k/a TRILOGY SOFTWARE,)
3 INC., and VERSATA)
DEVELOPMENT GROUP, INC.,)
4 f/k/a TRILOGY DEVELOPMENT)
GROUP, INC.,)
5 Plaintiffs,)
)
6 VS.) TRAVIS COUNTY, TEXAS
)
7 AMERIPRISE FINANCIAL,)
INC., AMERIPRISE)
8 FINANCIAL SERVICES, INC.,) DEC 23 2013
AMERICAN ENTERPRISE)
9 INVESTMENT SERVICES,) 14:34 A.
INC.,)
10 Defendants,) 53RD JUDICIAL DISTRICT

11
12 REPORTER'S CERTIFICATION
VIDEOTAPED DEPOSITION OF LEELA KAZA
13 SEPTEMBER 27, 2013

14 I, STEVEN STOGEL, Certified Shorthand Reporter in
15 and for the State of Texas, hereby certify to the
16 following:

17 That the witness, LEELA KAZA, was duly sworn by the
18 officer and that the transcript of the oral deposition
19 is a true record of the testimony given by the witness;

20 That the deposition transcript was submitted on
21 10. 3 to the witness or the attorney for
22 the witness for examination, signature, and return to me
23 by 11. 3, 2013;

24 That the amount of time used by each party at the
25 deposition is as follows:

150144

LEELA KAZA
CONFIDENTIAL TRANSCRIPT

9/27/2013

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1 Mr. Ben Foster -
2 Mr. Peter M. Lancaster - 4 hrs. 18 min.

3 That pursuant to information given to the
4 deposition officer at the time said testimony was taken,
5 the following includes counsel for all parties of
6 record:

7 Mr. Ben Foster and Mr. Travis Barton, Attorneys for
8 Plaintiffs

9 Mr. Peter M. Lancaster, Attorney for Defendants.

10 I further certify that I am neither counsel for,
11 related to, nor employed by any of the parties or
12 attorneys to the action in which this testimony was
13 taken, and further that I am not financially or
otherwise interested in the outcome of this action.

14 Further certification requirements pursuant to Rule
15 203 of TRCP will be certified to after they have
16 occurred.

17 Certified to by me this 15 day of
18 October, 2013.



19 Steven Stogel, Texas CSR 6174
20 Expiration Date 12-31-2014
21 U.S. Legal Support, Inc.
22 701 Brazos, Suite 380
23 Austin, Texas 78701
24 Firm Registration 344
Expiration Date 12-31-2014

25 Job No. 4-AUSTIN-150144 SS

LEELA KAZA
CONFIDENTIAL TRANSCRIPT

9/27/2013

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to the
 3 deposition officer on November 3, 2013,

4 If returned, the attached Changes and Signature
 5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered
 7 to Peter Lancaster, Custodial Attorney;

8 That \$ 800.00 is the deposition officer's
 9 charges to the Defendants for preparing the original
 10 deposition transcript and any copies of exhibits;

11 That the deposition was delivered in accordance
 12 with Rule 203.3, and that a copy of this certificate was
 13 served on all parties shown herein on 12/14/13 and
 14 filed with the Clerk.

15 Certified to by me this the 13th day of
 16 December, 2013.

17
 18 Steven Stogel *BPAE*
 19 Steven Stogel, Texas CSR 6174

20 Expiration Date 12-31-2014
 21 U.S. Legal Support, Inc.
 22 701 Brazos, Suite 380
 23 Austin, Texas 78701
 24 Firm Registration 344
 25 Expiration Date 12-31-2014

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